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GLOBAL FOOD INNOVATIONS, INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**
12

13 GLOBAL FOOD INNOVATIONS, INC., a
14 Delaware Corporation,

15 Plaintiff,

16 vs.

17 WESTERN PROPERTY MANAGEMENT,
LLC, a Nevada limited liability company;
18 MARC MIRO, an individual; JACK WISE,
an individual; JEFFREY COVEY, an
19 individual; GERALD NORMAN, an
individual; JAMES TERAN, an individual;
20 GOLD FOODS, INC., a Delaware
corporation; COMMERCIAL
INTERNATIONAL CORPORATION, a
21 Delaware corporation; MICRO-TENDER
INDUSTRIES, INC., a Delaware
22 corporation; and DOES 1 through 10,
inclusive,

23 Defendants.
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27
28

And Related Counterclaim.

Case No. 2:15-cv-00881-FMO-AGR

**DECLARATION OF CHERYL S.
CHANG IN SUPPORT OF
PLAINTIFF GLOBAL FOOD
INNOVATIONS, INC.'S MOTION
TO DISMISS DEFENDANT
MICRO-TENDER'S
COUNTERCLAIM**

[Fed. R. Civ. Proc. 12(b)(6)]

*[Filed concurrently with Motion to
Dismiss Counterclaim; Request for
Judicial Notice and Proposed Order]*

Date: July 30, 2015
Time: 10:00 a.m.
Place: Courtroom 22 (5th Floor)
Judge: Hon. Fernando M. Olguin

Complaint Filed: February 6, 2015
FAC Filed: April 24, 2015
Trial Date: May 17, 2016

DECLARATION OF CHERYL CHANG

I, CHERYL S. CHANG, do declare as follows:

1. I am a member of the Bar of the State of California and a partner in the firm Blank Rome LLP, counsel for plaintiff and counterdefendant Global Food Innovations, Inc. ("GFI"). I make this declaration in support of GFI's Motion to Dismiss defendant and counterclaimant Micro-Tender Industries, Inc.'s ("Micro-Tender") counterclaim ("Counterclaim"). I make this Declaration based on my personal knowledge, and if called upon to testify as a witness, I could and would testify competently to the facts herein.

2. Pursuant to L.R. 7-3, I requested a conference of counsel prior to filing this Motion by telephoning counsel for Micro-Tender, Douglas J. Rovens ("Mr. Rovens"), at his office three times and emailing him twice on June 18, 2015. Mr. Rovens refused to conduct the conference of counsel, and refused to return my call, claiming that the request for the conference was untimely. A true and correct copy of an email exchange between me and Mr. Rovens on June 18, 2015 is attached hereto as **Exhibit A.**

3. However, to the contrary, Mr. Rovens and I had discussed a proposed mutual dismissal and tolling agreement on June 8, 2015. Mr. Rovens assured me that he would respond to the proposal by the end of that week. However, Mr. Rovens never responded to that proposal thereby necessitating the filing of this Motion while Micro-Tender's motion to disqualify ("Motion to Disqualify") GFI's counsel remains pending. [Dkt. No. 53] To date, Mr. Rovens has not responded to the proposal or agreed to meet and confer regarding this Motion. A true and correct copy of an email exchange between me and Mr. Rovens dated June 8, 2015 is attached hereto as **Exhibit B.**

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1 4. As a result of Mr. Roven's refusal to participate in the conference of
2 counsel, the parties have been prevented from discussing the substance of this Motion
3 or any potential resolution.

4 5. Importantly, while Micro-Tender asserts in its Motion to Disqualify that
5 GFI's counsel should be disqualified from representing GFI against Micro-Tender in
6 this case, Micro-Tender has repeatedly declined offers from GFI to stipulate to extend
7 GFI's response date to the Counterclaim until after July 9, 2015. *See Exhibit B.*

8 6. On February 6, 2015, GFI filed its complaint for, *inter alia*, breach of
9 contract against Micro-Tender. [Dkt No. 1]. The breach of contract claim asserts that
10 on April 30, 2014, GFI and Micro-Tender entered into the License Agreement
11 whereby GFI licensed five patents from Micro-Tender. GFI alleged that while the
12 License Agreement required Micro-Tender to pay various maintenance fees for the
13 patents, Micro-Tender failed to do so, and allowed the patents to each expire.
14 However, despite the invalidity of the patents, Micro-Tender continued to charge and
15 receive royalty payments from GFI.

16 7. On April 24, 2015, GFI filed its first amended complaint ("FAC"). [Dkt.
17 No. 45]

18 8. In response, on May 5, 2015, Mr. Rovens requested a meet and confer
19 pursuant to L.R. 7-3 to discuss Micro-Tender's anticipated Motion to Disqualify and
20 motion to dismiss the FAC.

21 9. On May 11, 2015, in response to the L.R. 7-3, I advised Mr. Rovens that
22 GFI would be dismissing Micro-Tender from the FAC without prejudice. However,
23 Micro-Tender proceeded with filing the Motion to Disqualify, and instead of filing a
24 motion to dismiss the FAC, oddly filed an answer and the Counterclaim. [Dkt. Nos.
25 52-53]. The Motion to Disqualify is currently scheduled to be heard on July 9, 2015.
26 [Dkt. No. 68].

27 ///

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 22th day of June 2015, at Los Angeles, California.

4
5 /s/ Cheryl S. Chang
6 CHERYL S. CHANG
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EXHIBIT A

From: Chang, Cheryl S.
Sent: Friday, June 19, 2015 3:25 PM
To: Douglas J. Rovens
Cc: Locke, Leigh-Anne; Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

I will be including all of our email exchanges as part of my declaration.

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [<mailto:drovens@rovenslamb.com>]
Sent: Friday, June 19, 2015 2:58 PM
To: Chang, Cheryl S.
Cc: Locke, Leigh-Anne; Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Cheryl- I think advising the Court that I supposedly refused to meet and confer is misleading . You should advise the Court that your request to meet and confer on the issue you intend to raise on GFI's motion to dismiss was not until June 18th the day that GFI's answer to my client's counterclaim was due after a prior extension. That would be an accurate statement. Doug.

From: Chang, Cheryl S. [<mailto:Chang@BlankRome.com>]
Sent: Friday, June 19, 2015 2:23 PM
To: Douglas J. Rovens
Cc: Locke, Leigh-Anne; Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Thank you, Doug. I'll await your call on the arbitration issue.

And I will advise the court you refused to meet and confer pursuant to LR 7-3.

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [<mailto:drovens@rovenslamb.com>]
Sent: Friday, June 19, 2015 2:11 PM
To: Chang, Cheryl S.
Cc: Locke, Leigh-Anne; Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Cheryl- Respectfully, I disagree with your recitation of unrelated issues. The only issue with respect to the Rule 7-3 conference relates to GFI's proposed motion to dismiss purportedly on the ground that certain unspecified USPTO records allegedly are inconsistent with Micro-Tender's counterclaim, which you first informed of yesterday, the day GFI's response to the counterclaim was due. On that subject the request for a Rule 7-3 conference is not timely, which is a condition precedent to filing a motion to dismiss. Therefore, it would be a violation of the Court's local rules to file a motion to dismiss. With respect to the unrelated issue that you now have raised with regarding arbitration, I will review the relevant documents and happily speak with you about that next week. Best, Doug.

From: Chang, Cheryl S. [mailto:Chang@BlankRome.com]
Sent: Friday, June 19, 2015 1:38 PM
To: Douglas J. Rovens
Cc: Locke, Leigh-Anne; Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Doug:

Thank you for your email. I have to admit that I am a bit surprised by your sudden refusal to engage cooperatively as our working relationship to this point has been courteous. And I have extended the same courtesies to your co-defendant colleagues who have repeatedly delayed in requesting LR 7-3 meet and confers.

I also differ with you on your representation of the timing of our request to meet and confer. On June 8, 2015, when you granted us the extension to June 18th, I asked you to discuss with your client the proposed dismissal/tolling agreement concept. You stated you would get back to me by the end of that week. But from that day on, I received no response from your office whatsoever, though you promptly responded to Glenn's request for a selection from the panel of mediators from the C.D. Cal. ADR Program.

As you know, the purpose of LR 7-3 is to allow the parties every opportunity to informally resolve potential issues and avoid motion practice before the Court. My request on June 8, 2015 served that exact purpose. Hearing no response from you, I asked for a LR 7-3 to discuss our intended motion to dismiss. If you refuse to conduct that conference, I will submit a declaration with our motion to dismiss advising the Court of the same.

I again request that we hold the LR 7-3 conference, as I believe it will become readily apparent to you that you should either amend the complaint, or you will face motion to dismiss that will result in complete dismissal of your counterclaim. You have asserted allegations that are in direct contradiction to the judicially noticeable USPTO records.

Additionally, the Court will certainly take issue with your refusal to extend the time for GFI to respond to the Counterclaim until after the disqualification motion is heard (especially given the number of extensions we granted to Micro-Tender to file its response to the Complaint and First Amended Complaint). Separately, please call me to discuss the arbitration issue.

If I do not hear from you by 4pm today, I will understand that to mean you are refusing to meet and confer pursuant to LR 7-3, and we will proceed with filing our motion to dismiss on Monday.

Thank you,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [mailto:drovens@rovenslamb.com]
Sent: Friday, June 19, 2015 1:13 PM
To: Chang, Cheryl S.
Cc: Locke, Leigh-Anne; Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Cheryl- While I am happy to speak with you, the time for the Rule 7-3 conference is long gone. On June 8th (the day the response was due) I gave your firm an extension to respond to the counterclaim until June 18th. When I spoke with Jessica about the requested extension, I asked whether Blank Rome intended to file a motion to dismiss or an answer and she told me that decision had not yet been made. I heard nothing further on that subject until the day, as extended, that the response to the counterclaim was due, yesterday, June 18th. Even then your only request was for another extension to respond. I assumed it would be to answer the counterclaim because there had been no Rule 7-3 conference requested by your office regarding a motion to dismiss. It was only after I agreed to another extension until Monday, June 22nd to answer that I received your request for a Rule 7-3 conference. That request was made in your email when you sent the proposed stipulation and order for the extension yesterday afternoon. By then it was too late for a Rule 7-3 conference. Even so, I still agreed to an extension until this Monday to respond. I don't think that there is anything further to discuss regarding this subject and GFI should file its answer to the counterclaim on Monday. I do not agree that a motion to dismiss is proper based on this history and failure to meet and confer as required under Rule 7-3 at least 7 days prior to the filing of the motion. I cannot expose my client to fees for having to respond to a motion to dismiss when your firm has failed to comply with Rule 7-3 while having more than sufficient time to comply. Best, Doug.

From: Chang, Cheryl S. [<mailto:Chang@BlankRome.com>]
Sent: Friday, June 19, 2015 12:51 PM
To: Tammy Cortez; Douglas J. Rovens
Cc: Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Doug:

Let me know if you are free to speak this afternoon about Micro-Tender's counterclaim pursuant to LR 7-3.

Thanks,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Chang, Cheryl S.
Sent: Thursday, June 18, 2015 4:23 PM
To: 'Tammy Cortez'; Douglas J. Rovens
Cc: Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Thank you Tammy. I appreciate you letting me know.

Doug, let me know when you would be available to hold our LR 7-3 conference, and to discuss the other issues I raise below.

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Tammy Cortez [<mailto:tammy@rovenslamb.com>]
Sent: Thursday, June 18, 2015 3:54 PM
To: Chang, Cheryl S.; Douglas J. Rovens

Cc: Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Good Afternoon Cheryl,

Doug had to run out for an appointment but he wanted me to confirm you have authorization to file the stip for the extension we granted.

Thank you.

Tammy Cortez/ Legal Assistant
Rovens Lamb, LLP

From: Chang, Cheryl S. [<mailto:Chang@BlankRome.com>]
Sent: Thursday, June 18, 2015 2:49 PM
To: Douglas J. Rovens
Cc: Tammy Cortez; Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Doug:

Thank you again for the extension. Attached is a draft stipulation and proposed order. Please let me know if we are authorized to file.

Separately, I left you a voicemail to discuss GFI's intended motion to dismiss pursuant to LR 7-3. I do think we can avoid the necessity of a motion to dismiss if we discuss the counterclaim and you voluntarily agree to remove allegations that are contrary to the USPTO records. But we should discuss first.

I would also again reiterate my offer to stipulate that GFI's time to respond to Micro-Tender's Counterclaim be extended until a week after Micro-Tender's Disqualification Motion is heard on July 9, 2015. I think it would be reasonable given the allegations and arguments asserted in Micro-Tender's Disqualification Motion.

And I would also like to discuss the arbitration provision in the underlying License Agreement between GFI and Micro-Tender.

I will be in the office for the remainder of the day, please call me at your nearest convenience.

Thank you,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Chang, Cheryl S.
Sent: Thursday, June 18, 2015 1:52 PM
To: 'Douglas J. Rovens'
Cc: Tammy Cortez
Subject: RE: GFI v. Micro-Tender Response to Counterclaim

Thanks Doug. And thank you, Tammy, for passing along the message.

I actually also had a question about the allegations. Potentially we would move to dismiss. But I would like to discuss it with you first, because maybe you would consider amending. Call me when you are available.

Cheryl S. Chang | Blank Rome LLP

2029 Century Park East, 6th Floor | Los Angeles, CA 90067

Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [<mailto:drovens@rovenslamb.com>]

Sent: Thursday, June 18, 2015 1:50 PM

To: Chang, Cheryl S.

Cc: Tammy Cortez

Subject: GFI v. Micro-Tender Response to Counterclaim

Cheryl- You can have an extension until Monday, June 22nd. Doug.

DOUGLAS J. ROVENS

Rovens Lamb LLP

1500 Rosecrans Avenue, Ste. 418

Manhattan Beach, CA 90266

Telephone/ 310.536.7830

Facsimile/ 310.872.5026

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EXHIBIT B

From: Chang, Cheryl S.
Sent: Monday, June 08, 2015 4:28 PM
To: Douglas J. Rovens
Cc: McElroy, Jessica; Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender

Thanks very much Doug.

Let me know once you confer with your client regarding the proposed dismissal/tolling agreement concept.

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [mailto:drovens@rovenslamb.com]
Sent: Monday, June 08, 2015 4:24 PM
To: Chang, Cheryl S.
Cc: McElroy, Jessica; Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender

You are authorized to file the Stip.

DOUGLAS J. ROVENS
Rovens Lamb LLP
1500 Rosecrans Avenue, Ste. 418
Manhattan Beach, CA 90266
Telephone/ 310.536.7830
Facsimile/ 310.872.5026
Mobile/ 323.251.5864
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From: Chang, Cheryl S. [mailto:Chang@BlankRome.com]
Sent: Monday, June 08, 2015 4:08 PM
To: Douglas J. Rovens
Cc: McElroy, Jessica; Locke, Leigh-Anne
Subject: RE: GFI v. Micro-Tender

Doug:

Thank you for agreeing to extend GFI's time to respond to Micro-Tender's counterclaim. Attached is a draft stipulation and proposed order for your review. Let me know if you have any changes or if I have authorization to file with your /s/ signature. We would like to file this afternoon.

Thanks again,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Chang, Cheryl S.
Sent: Monday, June 08, 2015 2:59 PM
To: 'Douglas J. Rovens'
Cc: McElroy, Jessica
Subject: RE: GFI v. Micro-Tender

Doug:

Thanks for returning my call. I left you a voicemail returning yours. Please call back when you are available.

Thanks,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [mailto:drovens@rovenslamb.com]
Sent: Saturday, May 16, 2015 11:06 AM
To: Chang, Cheryl S.
Cc: McElroy, Jessica
Subject: RE: GFI v. Micro-Tender

Cheryl- Sorry I wasn't able to reach you yesterday. Following our meet and confer, we timely filed Micro-Tender's answer, counterclaim, and motion to disqualify because (a) GFI had not filed a request for dismissal of our client, (b) Micro-Tender has a meritorious compulsory counterclaim that it intends to pursue, and (c) Blank Rome should not be allowed to defend the counterclaim on behalf of GFI. Best, Doug.

From: Chang, Cheryl S. [mailto:Chang@BlankRome.com]
Sent: Friday, May 15, 2015 9:07 AM
To: Douglas J. Rovens
Cc: McElroy, Jessica
Subject: RE: GFI v. Micro-Tender

Douglas:

Can you give me a call on my cell – 310.228.8695? I'm in a deposition today, but I'd like to understand why you filed the motion to disqualify after we met and conferred under LR 7-3 and agreed to dismiss with your client without prejudice.

Thanks,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Chang, Cheryl S.
Sent: Monday, May 11, 2015 6:51 PM
To: 'Douglas J. Rovens'
Cc: McElroy, Jessica
Subject: RE: GFI v. Micro-Tender

Douglas:

GFI will be voluntarily dismissing Micro-Tender without prejudice at this time. We will prepare a dismissal of Micro-Tender for filing, or if we amend the first amended complaint, we will remove Micro-Tender from the pleadings. Let us know if you have any questions.

Thank you,
Cheryl

Cheryl S. Chang | Blank Rome LLP
2029 Century Park East, 6th Floor | Los Angeles, CA 90067
Phone: 424.239.3472 | Fax: 424.239.3478 | Email: Chang@BlankRome.com

From: Douglas J. Rovens [<mailto:drovens@rovenslamb.com>]
Sent: Thursday, May 07, 2015 8:41 AM
To: Chang, Cheryl S.
Subject: GFI v. Micro-Tender

Cheryl- As I told you, I'm tied up in expert depositions through Friday, which is why we needed to talk on Tuesday. I did send an email containing the general bases for the motions. Please respond to the email and I will try to call you later in the day, or sometime tomorrow after I receive your response. Best, Doug.

Sent from my Verizon Wireless 4G LTE Smartphone. Please excuse typos & brevity.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2029 Century Park East, 6th Floor, Los Angeles, California 90067.

On June 22, 2015, I served the foregoing document described as:
**DECLARATION OF CHERYL CHANG IN SUPPORT OF PLAINTIFF
GLOBAL FOOD INNOVATIONS, INC.'S IN SUPPORT OF MOTION TO
DISMISS DEFENDANT MICRO-TENDER'S COUNTERCLAIM** on the parties in this action by serving:

**Jack Wise
375 West Bedford Ave., Suite 101
Fresno, CA 93711
Telephone: 559-281-1884
Email: jack_ormundo@yahoo.com**

☒ **By Envelope** - by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as below and delivering such envelopes:


☒ **By Mail:** As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Federal Express:** I caused the envelope(s) to be delivered to the Federal Express office at 1925 Century Park East, 19th Fl., Los Angeles, California 90067, on June 22, 2015, for delivery on the next-business-day basis to the offices of the addressee(s).

By E-Mail Electronic Transmission: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) so indicated below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ Executed on June 22, 2015, at Los Angeles, California.

☒ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Leigh-Anne Locke